

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:NTA:JBMinsky
MASP-153259-04

date: December 22, 2004

to: Nina E. Olson
National Taxpayer Advocate
DJM
from: Judith M. Wall
Special Counsel to the National Taxpayer Advocate

subject: Career Path for Local Taxpayer Advocates

I.R.C § 7803(c) defines the establishment, authorities and operations of the Office of the National Taxpayer Advocate. Included within the specified responsibilities of the National Taxpayer Advocate (in conjunction with the Commissioner) is the development of "career paths for local taxpayer advocates choosing to make a career in the Office of the National Taxpayer Advocate". I.R.C § 7803(c)(2)(C)(iv). You asked whether the reference in the Code to local taxpayer advocate is limited to the managers who possess the title of Local Taxpayer Advocate for a particular State, Territory or region within a State; or whether the reference extends to all advocates of the Taxpayer Advocate Service.

CONCLUSION:

The National Taxpayer Advocate (in conjunction with the Commissioner) is responsible for developing career paths for all advocates employed by the Taxpayer Advocate Service, not only those who have the position now known as Local Taxpayer Advocate.

DISCUSSION:

There are no regulations defining the scope of I.R.C § 7803. Therefore, in order to define the meaning of local taxpayer advocate, we considered the legislative history and the circumstances that existed at the time of enactment.

The National Commission on the Restructuring of the Internal Revenue Service published its report on June 25, 1997. Section 7 of the report addressed issues of taxpayer rights. The first portion of Section 7 discusses taxpayer advocates. The Report notes that the Taxpayer Advocate (as that position existed prior to the restructuring) was not viewed as independent by many members of Congress. Their view was held, at least in part, because the Taxpayer Advocate had been a career employee, who likely had career goals within the IRS after serving as Taxpayer Advocate. The Commission noted that there was a similar problem with local advocates

whose work was reviewed by District Directors and Service Center Directors. Against this backdrop, the Commission recommended that:

The Commissioner should ensure sufficient staffing of local Taxpayer Advocates (LTAs) and, at a minimum, that their number and geographic coverage is not reduced. The Commission is concerned that the current number of LTAs and their allocated time for taxpayer problem resolution is inadequate. The national Advocate should report annually to the Board and Congress as to whether LTA coverage levels and allocated time are adequate to resolve taxpayer problems and what the optimal staffing level should be.

* * * *

... Finally, the Commission recommends that the IRS develop career paths for LTAs, so that individuals can progress through the General Schedule in the same manner as examination employees, without having to leave the LTA program.

Report of the National Commission on the Restructuring of the Internal Revenue Service, "A Vision for a New IRS", June 25, 1997.

It is apparent from this excerpt of the Commission's report that when referring to local taxpayer advocates the Commission was referring to the workforce of employees who were actually helping taxpayers (i.e., advocates) with the problems they were having with the IRS. Further, the fact that the Commission specified that the employees of the LTA program should be able to progress through the General Schedule in the same manner as examination employees, bolsters the conclusion that the Commission was referring to all advocates in making its recommendations. Examination employees include those who conduct office audits, those who conduct field audits and the managers of those employees. Certainly the Commission was not thinking of only the GS-14 or GS-15 managerial positions when it recommended that there be career paths for LTAs.

The Commission Report predicated the legislative changes that were proposed by the House and Senate. Both the House and Senate bills contained the provision that is now found in IRC 7803(c)(2)(C)(iv). In addition, the House Report explaining the provision included the following:

It is intended that the Taxpayer Advocate will work with the Commissioner in developing career paths for local problem resolutions officers, so that individuals can progress through the General Schedule in the same manner as examination employees, without having to leave the problem resolution system.

H.R. Rep. No. 105-364 at 42-44.

The Senate Report does not provide any explanation of the "career path" provision of the bill. However, if one considers the paragraph in which the career path provision appears, it seems that the Senate was also considering all advocates, when including a requirement that the Taxpayer Advocate develop career paths for local taxpayer advocates. The Senate Report includes the following:

The Senate Amendment replaces the present-law problem resolution system with a system of local Taxpayer Advocates who report directly to the National Taxpayer Advocate and who will be employees of the Taxpayer Advocate's Office, independent from the IRS examination, collection and appeals functions. The National Taxpayer Advocate has the responsibility to evaluate and take personnel actions (including dismissal) with respect to any local Taxpayer Advocate or any employee in the Office of the National Taxpayer Advocate. In conjunction with the Commissioner, the National Taxpayer Advocate is required to develop career paths for local Taxpayer Advocates.

S. Rep. No. 105-174 at 21-25.

The problem resolution system that existed prior to the enactment of RRA '98 included employees that were below the manager level. The Senate explanation is directed at replacing the system where the line employees reported to the District Director or Service Center Director. The Senate was transferring to the National Taxpayer Advocate the authority that the District Directors and the Service Center Directors had over problem resolution employees in order for the Taxpayer Advocate workforce to remain independent from the IRS examination, collection and appeals functions. If this paragraph is intended to explain (at least in part) that the National Taxpayer Advocate has the authority and responsibility of hiring and firing all employees of the Taxpayer Advocate's office, one would conclude that inclusion of the "career path" provision in the same paragraph is also intended to apply to all advocates of the Taxpayer Advocate's office. Moreover, there is no indication that the Senate intended anything different than the House by including this career path provision in its bill. Under these circumstances, the most reasonable conclusion is that Congress intended for the National Taxpayer Advocate (in conjunction with the Commissioner) to develop career paths for all advocates of the Taxpayer Advocate's office and not just the managerial employees who are now known as Local Taxpayer Advocates.

Finally, I.R.C. § 7803(c)(4) supports the conclusion that the National Taxpayer Advocate is required to develop career paths for all advocates of the Taxpayer Advocate Service. This subparagraph sets forth the operations for the local offices of the Taxpayer Advocate Service. This subparagraph uses the phrase "local taxpayer advocate". The obligations and authorities found at IRC § 7803(c)(4) apply to all advocates employed by the Taxpayer Advocate Service. For instance, all advocates of the Taxpayer Advocate Service (other than the National Taxpayer Advocate) report to a supervisor who is also an employee of the Taxpayer Advocate Service. IRC § 7803(c)(4)(A)(i). Similarly, all advocates of the Taxpayer Advocate Service must, at the initial meeting with a taxpayer seeking assistance, notify the taxpayer that the Taxpayer Advocate Service offices operate independently of any other IRS office and report directly to Congress through the National Taxpayer Advocate. Therefore, if the term "local taxpayer advocate" means all advocates of the Taxpayer Advocate Service for purposes of IRC § 7803(c)(4), it also must mean all advocates of the Taxpayer Advocate Service for purposes of IRC § 7803(c)(2)(C)(iv).

Based upon the foregoing, we conclude that the National Taxpayer Advocate (in conjunction with the Commissioner) is responsible for developing career paths for all advocates of the Taxpayer Advocate Service, not only those who have the managerial position now known as Local Taxpayer Advocate.